IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 470 OF 2001

Baby Ananta Damse.)
(At present - Yerwada Central)
Prison).) ...Appellant

V/s.

The State of Maharashtra. ...Respondent

Dr.Y.M. Chaudhary for Appellant.
Mr.A.S. Shitole, APP for State.

CORAM : D.G. DESHPANDE AND V.M. KANADE, JJ.

DATED : DECEMBER 13, 2005

ORAL JUDGMENT (PER V.M. KANADE, J.) :-

. The appellant is challenging the Judgment and Order passed by the Additional Sessions Judge in Sessions Case No.428/99. By the Judgment Order dated 21st December, 2000, the Additional Sessions Convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced her to suffer Rigorous Imprisonment for life and to pay a fine of Rs.100/- and in default, to suffer Simple Imprisonment for two days.

2. Prosecution case in brief is that the appellant

was married to Ananta Mahadu Damse. Radhabai is the mother of the appellant. Ananta was in service with the Revenue Department and at the relevant time, was on bungalow duty at the residence of the Sub-Divisional Officer, Khed. The prosecution case is that on 6.7.99 when the deceased Ananta returned home, the appellant asked him where he had been for two days. There was exchange of words between the two. It is alleged that the appellant refused to serve her husband and thereafter, poured kerosene oil on his person and set him on fire with the help of a matchstick. Ananta was admitted in the Sassoon Hospital, however, he died due to the burn injuries on 22nd July, 1999. It is alleged that when the accused poured kerosene and set the deceased Ananta on fire, her mother had caught hold of the hands of the deceased.

3. The trial Court on the basis of the evidence adduced by the prosecution acquitted accused no.2 Radhabai of the offence with which she was charged. The trial Court, however, convicted the appellant herein for the offence punishable under Section 302 of the IPC.

4. We have heard the learned Counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the State at length. The learned Counsel appearing on behalf of the appellant submitted that the evidence against the appellant was mainly in the form of three dying declarations which was made by the deceased Ananta from time to time. The first dying declaration was made to his colleague PW 1 - Rohidas Rawte. The second dying declaration was given to Police Head Constable PW - 4 Waman Adhari which was also treated as a FIR and the third dying declaration was recorded by the Special Judicial Magistrate PW 5 - Sharad Joshi when he was admitted in the Sassoon Hospital. There was one more dying declaration on which reliance was placed by the prosecution i.e. oral dying declaration made by the deceased to his brother - PW 2. It is submitted by the learned Counsel appearing on behalf of the appellant that there are several discrepancies in these dying declarations. He submitted that there was number of contractions in the said dying declarations. He submitted that therefore, in view of the various

Judgments of the Supreme Court and this Court, the trial Court had erred in relying on these dying declarations. He further submitted that the trial Court had not taken into consideration the evidence of the defence witness who was a psychiatric doctor who had examined deceased Ananta and who had stated in his evidence that deceased was suffering from a manic depression. In support of the said submission, he relied on the Judgment of the Supreme Court in the case of **Thurukanni Pompiah and Anr. V/s. State of Mysore reported in AIR 1965 SC 939**. The learned APP, on the other hand, vehemently opposed the submission made by the learned Counsel appearing on behalf of the appellant. He submitted that there are minor contradictions in the dying declaration. The accused had stated in the statement that his wife had poured kerosene and set him on fire. He submitted that there was no reason to interfere with the view taken by the trial Court.

5. We have heard the learned Counsel appearing on behalf of the appellant and learned APP appearing on behalf of the State at length. Both of them have taken

us through the Judgment of the trial Court as also evidence adduced by the prosecution and by the defence. We have given our anxious consideration to the submission made by both of them.

6. The prosecution has examined 10 witnesses. The prosecution has solely relied on the dying declarations given by the deceased from time to time. The defence has examined Dr.Sunil Unde as a defence witness. PW 1 Rawte has stated in his evidence that he was on the night duty on 6.7.99 at the bungalow of the Sub-Divisional Officer, Khed and at that time, on 6.7.99 at 10.30 p.m. deceased Ananta came there and inquired whether the Sub-Divisional Officer was inside the house. PW 1 told him that he was not in the house. He also noticed that there were burn injuries on him. Deceased Ananta told him that his wife poured kerosene on his person and had set him ablaze. He has stated that he had taken him to the Chandavle Hospital where first aid was given and thereafter, he was sent to Sassoon Hospital. In the cross-examination, he has stated that the house of the deceased was situated at a distance of

one kilometre from the residence of the Sub-Divisional Officer, Khed. He has further stated that the deceased was talking for about 20 minutes with this witnesss at the residence of the Sub-Divisional Officer. PW 2 - Pandurang who is the brother of the deceased Ananta has stated that on 7.7.99, he came to know that Ananta had received burn injuries and was admitted in the Sassoon Hospital, Pune. When he met Ananta in the hospital, he was informed by Ananta that his mother-in-law and his wife had burnt him. When he asked him why they had burnt him, Ananta told him that he had returned from his village in the night and had asked for meal, there was quarrel between the husband and wife and thereafter his wife poured kerosene and set him on fire. PW 2 in the cross-examination has admitted that one hand of Radhabai, mother-in-law of deceased Ananta is weak. PW 3 - Dattatraya Kale was examined as the panch to prove the spot panchanama, however, he did not support the prosecution case and was declared hostile. PW 4 - Waman Adhari was a Police Head Constable who was attached to Police Station Khed. He has stated that he received information at around 3.30 a.m. on phone that a person

having burn injuries was admitted in the hospital. He, therefore, immediately went to the Chandavle Hospital and recorded the statement of Ananta as directed by him. He obtained the signature of Ananta and the doctor who was present there viz. Dr.Shaikh Zahida Rehman to put her endorsement on it. He also signed the said statement. In his cross-examination, he has stated that he had no idea if Ananta was under the influence of alcohol or not and he did not ask Dr.Shaikh whether the patient was in a position to talk. This is the first written dying declaration which is at Exhibit 22. PW 5 - Sharad Joshi was a Special Judicial Magistrate at that time. He has stated that on 7.7.99, he received a request to record the dying declaration of Ananta. He accordingly made enquiries with the doctor about the condition of the patient and thereafter recorded the dying declaration. The second dying declaration is at Exhibit 25 and it is in the question-answer form. PW 6 - Prafulla Herode was working in Sassoon Hospital since 1999 as a Medical Officer. He has stated that he had put his endorsement on the dying declaration recorded by Sharad Joshi. PW 7 - Dr.Ganesh Jadhav is the Medical

Officer attached to the Primary Health Centre, Rajguru Nagar. He has stated the condition of the patient when he was admitted in the hospital. PW 8 - Dr.Dynaneshwar Rahinj was attached to the Burns Ward of the Sassoon Hospital at that time. He has stated that the deceased had received 58% wounds. PW 9 - Prashant Narayan Patil who is attached to the Sassoon Medical Hospital as a Medical Officer and who performed post mortem examination of Ananta on 22.7.99, has stated that the death was caused as a result of septic shock due to burns. PW - 10 Nandkumar Godse is the Investigating Officer who carried out the investigation. The defence examined one witness viz. DW 1 - Dr.Sunil Unde who was a lecturer in the department of Psychiatric B.J. Medical College, Pune. From all these evidence, it can be seen that the prosecution has essentially relied on three written dying declarations and one oral dying declaration made to PW 2 - Pandurang.

7. The law on this aspect is quite well settled. The Supreme Court right from the case of **Dr. Khushafrao V/s. State of Bombay reported in 1958 SC page 22** has

held that if there are more than one dying declarations and there is infirmity and inconsistency in these dying declarations and if the Court felt that dying declarations were not reliable by themselves, it was not proper to convict the accused solely on the basis of these dying declarations and it was essential to see whether there is any evidence to corroborate whatever is stated in the dying declarations and if no corroboration is found in the other evidence, the accused was entitled to be acquitted by giving him the benefit of doubt.

8. First dying declaration is dated 7.7.99. This dying declaration is recorded by the Police Head Constable PW 4 - Waman Adhari which is at Exhibit 22. In this dying declaration, Deceased Ananta had stated that he went home at about 8.00 p.m. in the night and knocked the door. His wife opened the door and asked him where he had been for two days and for that reason, started abusing him. He, therefore, asked his wife that he was hungry and he should served with meal. She accordingly prepared 2-3 chapatis. He asked her what vegetables were there alongwith chapatis. She however

replied that there was no vegetable. He has stated that his mother-in-law caught hold of his hand and his wife poured kerosene from a rockel can and set him ablaze with a matchstick. His wife extinguished the fire by putting a blanket. He has stated that thereafter he went to the residence of the Sub-Divisional Officer and he met Rohidas Rawte who took him to Chandavle Hospital. He has stated that his wife had attempted to murder him on 2-3 occasions, however, he had not filed any complaint against her. This has been signed by two panchas and by the police constable. The next dying declaration is recorded by the Special Executive Magistrate Sharad Dattatraya Joshi which is at Exhibit 25. He has stated before the Special Executive Magistrate that he asked his wife to prepare chapatis but instead of preparing chapatis, she poured kerosene on him and set him on fire. The defence has examined a doctor who had examined the deceased in Sassoon Hospital and his name was mentioned in the list of witnesses by the prosecution. However, he was not examined by the prosecution and therefore, the defence had examined him as their witness. DW 1 - Dr.Sunil Unde has stated that

the deceased was admitted in the Burns Ward of Sassoon Hospital, Pune and he was referred to him on 13.7.99. DW 1 has stated that there was a family history of this patient and suicidal attempt had been made by his brother. DW 1 has stated that after the deceased Ananta was admitted in the hospital, he noticed that Ananta was talking excessively and his activity had increased and he was talking loudly. Because of his excessive activity, he was restrained to the cot. DW 1 has further stated that after examining his mental status, he found that psycho motor activities had increased. DW 1 has further stated as follows :- "He was talking in pressurised speech. He had flight of ideas. He was expressing grandiose abilities. I diagnosed him as suffering from manic episode. I advised him to start on anti-psychotic medicines." Notings in the case papers dated 13.7.99 was produced by him at Exhibit 35. DW 1 has stated that manic patient talks excessively and mania is basically disorder of mood. From the evidence of DW 1, it can be seen that deceased Ananta was examined by a doctor who has expressed that his mental condition was not proper. Alongwith this evidence and

from the examination of the evidence in the form of three dying declarations, it can be seen that there are number of contradictions. PW 1 has stated that deceased Ananta came to residence and informed him that his wife had poured kerosene and set him ablaze. Doctor who examined deceased Ananta had performed post mortem, has stated that Ananta had received 58% burns. It is difficult to imagine how a person who had received 58% burns could travel alone for a distance of about one kilometre instead of going to a doctor or the police stations. PW 2 is the brother of Ananta has stated that one hand of mother-in-law of Ananta was weak. In the dying declaration, he has stated that his mother-in-law had caught hold of one hand and his wife had poured kerosene. This appears to be highly improbable. His mother-in-law was of about 70 years of age at that time and admittedly did not have any strength in her hands. DW 1 has stated that Ananta was uncontrolable and had to be restrained to a cot. In the first dying declaration at Exhibit 22, Ananta has stated that after Ananta caught fire, his wife opened the door and started shouting that her husband poured kerosene on himself and

set himself on fire and his wife had put a blanket on him whereas the statement before the Special Executive Magistrate, he has not mentioned this fact. Further before the Special Executive Magistrate, he has stated that his wife has poured kerosene and before that she had put chilly powder in his eyes. In the two dying declarations, he has stated that the accused no.1 is not his legally wedded wife. The accused has stated in her 313 statement that after she had served food to her husband, he was sleeping on the mattress on the floor and there was lantern near his bed and the children and the mother-in-law were sleeping on the cot and after sometime, the accused started shouting and she noticed that he was on fire. She, therefore, extinguished the fire.

9. In our view, considering the mental state of mind of Ananta as deposed and the doctor who had examined him in the Sassoon Hospital immediately after he was admitted and the descripancies in the dying declarations, it is not possible to convict the accused on the basis of these dying declarations. The accused,

therefore, is entitled to be given the benefit of doubt.

10. The appeal is allowed. The Judgment and Order of the trial Court so far as the conviction of the appellant is concerned is set aside. The appellant is acquitted of the offence with which she is charged. Accused to be released forthwith unless otherwise required in any other case.

. The appeal is disposed of.

(D.G. DESHPANDE, J.)

(V.M. KANADE, J.)